

Special Civil Application No 2667 of 1988

Date of decision: 12th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA.

1. Whether Reporters of Local Papers may be allowed to see the judgments? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MOHANBHAI KHIMABHAI

vs

COMPETENT AUTHORITY AND DEPUTY COLLECTOR

Appearance:

Shri S. TRIPATHI, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA  
12th February 1996

#### ORAL JUDGEMENT

The order passed by the Competent Authority at Bhavnagar (respondent No.1 herein) on 27th March 1987 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 29th February 1988 in Appeal No.Bhavnagar-10 of 1987 is under

challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 4141 square metres.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing survey No.48/1 admeasuring 12141 square metres situated in village Adhewada within the urban agglomeration of Bhavnagar (the disputed land for convenience). On coming into force of the Act, the petitioner filed his declaration in the prescribed form with respect to his holding of the disputed land for and on behalf of his family. It appears that he also applied for exemption under section 20 (1) of the Act on the ground that it was used for agricultural purposes and agricultural operations were carried on therein. It appears that such exemption came to be granted. It appears that the exemption granted under section 20 (1) of the Act came to be revoked subsequently by some order passed on 27th January 1987 on the request of the petitioner himself. Thereupon, the declaration filed by the petitioner under section 6 (1) of the Act was processed by respondent No.1. A draft statement under section 8 (1) of the Act was served to the petitioner. The petitioner filed his objections thereto inter alia contending that the petitioner wanted to apply for a permission under section 21 (1) of the Act with respect to the disputed land. By his order passed on 27th March 1987 under section 8 (4) of the Act, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 4142 square metres. Its copy is at Annexure-E to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Bhavnagar-10 of 1987. By the order passed on 29th February 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-I to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-E to this petition as affirmed in appeal by the appellate order at Annexure-I to this petition.

3. It transpires from the material on record that the disputed land was enjoying exemption under section 20 (1) of the Act on the ground that it was an agricultural land and agricultural operations were, in fact, carried on therein. It has been urged by learned Advocate Shri Tripathi for the petitioner that the disputed land should have been excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that the land was situated in the

residential zone as transpiring from the impugned order at Annexure-E to this petition and in that case the aforesaid binding ruling of the Supreme Court will not be applicable in this case.

4. It however transpires from the material on record that the attention of the authorities below was not focused on the aforesaid binding ruling of the Supreme Court as it had not seen the light of the day at the relevant time. It does not become clear from the material on record whether or not a master plan answering its definition contained in section 2 (h) of the Act was in existence at the relevant time. If such a plan was in existence, whether the land was shown therein in any zone other than the agricultural zone. It has also to be ascertained whether or not agricultural operations were, in fact, carried on in the disputed land on the date of coming into force of the Act. The applicability or otherwise of the aforesaid binding ruling of the Supreme Court would depend on answers to the aforesaid three questions. The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid three questions and in the light of the aforesaid binding ruling of the Supreme Court. The impugned orders at Annexures-E and I to this petition will have to be set aside for the purpose.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Bhavnagar (respondent No.1 herein) on 27th March 1987 under section 8 (4) of the Act at Annexure-E to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 29th February 1988 in Appeal No.Bhavnagar-10 of 1987 at Annexure-I to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.

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